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BEFORE THE
POSTAL RATE COMMISSION

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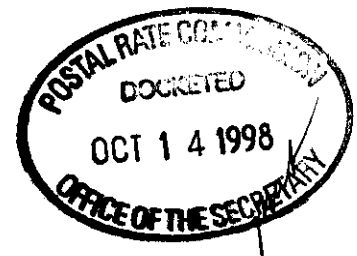
REVISIONS TO LIBRARY
REFERENCE RULE

DOCKET NO. RM98-2

COMMENTS OF UNITED PARCEL SERVICE
ON PROPOSED REVISIONS TO COMMISSION
RULES ON LIBRARY REFERENCES
(October 14, 1998)

Pursuant to Commission Order No. 1219 (August 27, 1998), United Parcel Service ("UPS") submits its comments on the Commission's proposed revisions to Section 31(b) of its Rules of Practice with regard to library references.

In general, the proposed revisions (1) indicate when it is appropriate to file documents as library references rather than serve them on all participants to a proceeding, (2) require a party who seeks to treat a document as a library reference (rather than serving it on all participants) to file a motion, (3) require the filing party to label, describe the contents of, state the purpose for, and provide certain other information regarding the library reference, and (4) mandate that an electronic version of the library reference be filed. The proposed new rule would also require the filing party to "identify portions [of the library reference] expected to be entered [into the record] and the expected sponsor(s)." Proposed Rule 31(b)(3), Order No. 1219 at 9.



COMMENTS ON THE PROPOSED RULE

The sole purpose of designating certain types of documents as library references is to permit a party to give other parties access to the document by filing it with the Commission rather than serving it on all parties. UPS agrees that it is helpful to specify by rule the most common instances in which it is appropriate to file documents as library references rather than serving them. UPS also supports the labeling and description requirements contained in subparagraph (5) of the proposed rule, the requirement that an electronic version of a library reference be filed, and the mandate in subparagraph (3) that the filing party "explain how the material relates to the participant's case or to issues in the proceeding; indicate whether the material contains a survey or survey results; and provide a good-faith indication of whether the participant anticipates that the material will be entered, in whole or in part, into the evidentiary record," "identify authors or others materially contributing to the preparation of the library reference," and indicate those portions of the library reference "expected to be entered [into the record] and the expected sponsor(s)."

However, UPS questions the need for the proposed requirement that a party always be required to file a motion demonstrating the appropriateness of treating a document as a library reference. The parties (and especially the Postal Service) file a large number of library references in Commission proceedings. For example, in Docket No. R97-1 the Postal Service alone filed more than 350 library references. In most cases, these filings are appropriate. Requiring the filing party to submit a motion in every one of these instances would significantly increase the already enormous amount of paper filed and served during the course of a Commission proceeding, with little or no additional benefit. That would impose an additional burden -- and therefore additional costs -- on all parties to the case, especially the party filing the library reference, who would be required to prepare the motion. The need to prepare a motion could even chill parties -- and particularly the Postal Service -- from submitting a

“secondary source” (Order No. 1219 at 8) in the absence of a discovery request, by creating a disincentive to file library references except where absolutely necessary, thereby resulting in less rather than more data being available to the parties. That in turn could increase the need for discovery requests, with their inevitable costs and delays.

Requiring a motion for every library reference filing would also impose an added burden on the Presiding Officer, who would be required to issue additional rulings (even if only pro forma ones) disposing of the many motions filed.

UPS submits that a better approach may be to specify in proposed subsection (2) the instances now listed in proposed subparagraphs (i) through (iv) as appropriate circumstances for filing a library reference and require a motion only “when otherwise justified by circumstances.” In the few instances where a party may abuse this privilege, a disadvantaged party may then seek relief, if necessary.¹ Such requests for relief are unlikely. The common sense approach would be for the disadvantaged party to contact the filing party to obtain a copy, thus assuring access to the document.

Since timely access to information is what is at issue here, UPS suggests that the proposed rule be modified to require (1) that two copies of a library reference be filed with the Commission, and (2) that the filing party supply a copy to another party within three days of a request.² Early in Docket No. R97-1, UPS informed the Commission of its difficulty in obtaining copies of library references through the Commission’s Docket Section because other parties had borrowed the library

1. Thus, a motion may not be necessary even “when otherwise justified.”

2. The Alliance of Nonprofit Mailers made a similar suggestion in Docket No. R97-1. See Response of Alliance of Nonprofit Mailers to Notice of Inquiry No. 1 (October 3, 1997) at 2; Order No. 1219 at 4.

references to copy them. Docket No. R97-1, Tr. 1/42-44. The Postal Service responded that library references could also be obtained from the Postal Service's library. Id., Tr. 1/45-46. Unfortunately, that did not solve the problem of obtaining timely access.³ UPS submits that having two copies placed on file with the Commission in conjunction with requiring a filing party to provide a copy directly to another party promptly upon request would go far toward achieving timely access.

TECHNICAL SUGGESTIONS

UPS has some technical refinements to suggest as well. As proposed, Section 31(b) would contain a general subsection (1) which relates to documents filed as exhibits, a new subsection (2) entitled "Library references," and new subsections (3)-(7) which also deal with library references. Since proposed subsections (3)-(7) relate solely to library references and not to the other types of documents covered by Section 31(b), they are more appropriately subdivisions of subsection (2). Accordingly, we suggest that a subparagraph (i) designation be added immediately after the subsection (2) title "Library references," that proposed paragraphs (i)-(v) be redesignated as (a)-(e), and that proposed subsections (3)-(7) be redesignated as subparagraphs (ii)-(vi).

REVISED PROPOSAL

Should the Commission conclude that a motion need not be required in every instance when a party seeks to file a document as a library reference rather than

3. Postal Service library personnel are always extremely helpful. However, obtaining access to the Postal Service library is not always easy, and sometimes needed library references had not yet been deposited there or were unavailable for other reasons.

serving it on all parties, UPS proposes that the following language be adopted in place of proposed subsection (3):⁴

(3) *[Form and timing of required demonstration.*
The requisite demonstration shall be provided in the form of a motion. In general, the motion shall be accompanied by the simultaneous filing, with the Commission's docket section, of a copy of the material proposed for designation as a library reference. If appropriate, a comprehensive description of the material may be filed with the docket section in lieu of the material itself.]

[The motion shall set forth with particularity the reason(s) why designation of the material as a library reference is being sought;] **When a participant files a library reference, the participant shall state why the document is being filed as a library reference rather than being served on all parties;** explain how the material relates to the participant's case or to issues in the proceeding; indicate whether the material contains a survey or survey results; and provide a good-faith indication of whether the participant anticipates that the material will be entered, in whole or in part, into the evidentiary record. The [motion] **participant** shall also identify authors or others materially contributing to the preparation of the library reference.

If the participant filing the library reference anticipates seeking to enter all or part of the material contained therein into the evidentiary record, the [motion] **participant** also shall identify portions expected to be entered and the expected sponsor(s).

In addition, the phrase "the participant satisfactorily demonstrates that" would be deleted from proposed subparagraphs (2)(i) through (iv), and the phrase

4 . New language is indicated in bold; language deleted from the rule as originally proposed is contained in brackets.

"proposed to be" would be eliminated from the first sentence of subsection (5).

Finally, the phrase "as determined by the Commission or presiding officer" would be deleted from subparagraph (2)(v), unless the Commission decides to require a motion in such instances; in that event, UPS suggests that, for the sake of clarity, the phrase "upon motion" be added at the beginning of subparagraph (v).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.



John E. McKeever

Dated: October 14, 1998
Philadelphia, PA